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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,510	06/01/2001	Daniel Monget	BONN-054	7991

7590

09/09/2003

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EXAMINER

GITOMER, RALPH J

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 09/09/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,510

Applicant(s)

Monget et al.

Examiner

Ralph Gitomer

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 13, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12 6) ☐ Other:

The amendment, RCE request, and IDS received 6/13/2003 have been entered and claims 12-27 are presently pending in this application. The amended title is unacceptable.

5 The rejection of record of claims 12-20, 22-23, 27 under 35 USC 102(b) over Read (US 5,795,773) is maintained.

 The rejection of record of claims 21 and 24-25 under 35 USC 103(a) over Read (US 5,795,773) is maintained.

10 Applicants argue that the cited reference to Rosnick has an effective date after the claimed priority date of this application to 12/4/1998. Rosnick (WO 00/09649) is a continuation of a US case which is related to Read (US 5,795,773) and has essentially the same specification and claims as Rosnick. The documents are considered here to be equivalents, except Read
15 has a publication date of August 18, 1998. Note that Rosnick has a chain of related US cases, 5,795,773, 5,180,073, 3,951,293, 3,559,834, all with earlier publication dates than the present priority date claimed.

20 Applicants further argue that Read fails to show reducing a detection time of detecting a microorganism by adding a support as is now claimed.

It is the examiner's position that Read teaches in column 1 lines 40-42, detecting microbial activity after a period of time. In column 2 first paragraph, the growth rates of microorganisms is discussed. The reference also discussed different
5 temperatures of incubation, varying concentrations of gases, both which would be expected to affect growth rates of microorganisms. Since no particular detection time under specified conditions is claimed, the claims are anticipated by Read.

Applicants are reminded that the invention is the subject
10 matter defined by the claims, and the limitations of the specification are not read into the claims where no express statement of that limitation is included in the claims, see In re Priest, 199 USPQ 11.

15 Claims 12-27 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

20 The addition to claim 12 of ~~reducing~~ a detection time of said microorganism~~s~~ is indefinite because there is no detecting step and one would not know from what the time is reduced from or to what.

The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm. The examiner can also be reached on alternate Mondays. If
10 attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone number for this Art Unit is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist
15 whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at www.uspto.gov and click on the button Patent Electronic Business Center for more information.

Ralph Gitomer

Ralph Gitomer
Primary Examiner
Group 1651

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